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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

Estate of RICHARD H. KLOOR, Deceased.	
JONATHAN KLOOR et al., **Contestants and Appellants,** **v.** **LESLI KLOOR, individually and as Executor, etc.,** **Petitioner and Appellant.**	**A117181** **A117207** **(Napa County Super. Ct. No. 26-23269)**
JONATHAN KLOOR et al., **Plaintiffs and Appellants,** **v.** **LESLI KLOOR, individually and as Trustee, etc., et al.** **Defendant and Appellant.**	**(Napa County Super. Ct. No. 26-23653)**

Jonathan Kloor (Jonathan) and Christopher Kloor (Christopher) appeal from the trial court's judgment dismissing their contest of the will and trust of their father, the decedent Richard H. Kloor (Richard), and from the court's judgment dismissing Jonathan's petition alleging that Richard's wife, Lesli Engelman Kloor (Lesli), abused and neglected Richard under Oregon and California law.[1] We conclude the trial court did not err in concluding the will was not the product of undue influence and in granting Lesli's motion for judgment notwithstanding the verdict (JNOV) following the jury's verdict on the abuse and neglect claims.[2]

BACKGROUND[3]

Richard died of liver cancer on August 28, 2003, at age 49. Prior to becoming ill, Richard was an anesthesiologist with a practice in Oregon. Richard married Kathleen Kloor (Kathleen) in 1979 and they had two sons, Jonathan and Christopher. Richard and Kathleen divorced in 1998.

After the divorce, Richard met Lesli, a physicians' assistant. They began dating and Lesli lived with Richard from March 1999 to September 2000 and then roughly for another year starting in March 2001. Richard proposed marriage to Lesli in October 2000, but she did not feel ready to marry him.

In early September 2002, Richard and Lesli were traveling together in Wyoming when he began complaining of abdominal pain. He was diagnosed with liver cancer. Richard and Lesli married later that month.

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[1] For the sake of clarity, we refer to Richard and his family members by their first names. No disrespect is intended.

[2] Lesli filed a cross-appeal, which we need not reach because it raises contentions applicable only if this court were to reverse the trial court's judgment.

[3] Many of the factual assertions in appellants' briefs lack citations to the record or contain citations to portions of the record that fail in whole or in part to support the assertions. It is not our responsibility to comb the appellate record for facts to support appellants' claims. (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.) Therefore, we ignore any such unsupported factual assertions.

Richard's existing will had been executed in 1990, when he was married to Kathleen, and he asked Lesli to assist in finding an estate planning lawyer. Lesli received a referral to Priscilla Taylor, who, in 2002, had practiced law for over 15 years and had focused on estate planning for over five of those years. Ms. Taylor testified she personally met with Richard on five occasions between September and November 2002. Lesli was generally not present except at the beginning of the meetings. On December 18, 2002, Richard met with Ms. Taylor and signed his will and a revocable trust agreement. Both documents bequeathed, to Lesli, Richard's interest in any real property, most of his personal property, and the residue of the estate (through the revocable trust). On the same date Richard signed an irrevocable trust agreement; the trust was to be funded with an IRA account and Jonathan and Christopher were to be beneficiaries of the trust.

In May 2003, Richard and Lesli moved to Napa County, where Lesli's parents lived. Richard died about three months later, on August 28.

In October 2003, Lesli filed a probate petition (*Estate of Richard H. Kloor*, Super. Ct. Napa County, No. 26-23269) (hereafter Estate Case), in her capacity as nominated executor of Richard's will. Jonathan and Christopher contested the will in the Estate Case and filed a petition seeking to invalidate Richard's revocable living trust (*Kloor v. Kloor*, Super. Ct. Napa County, No. 26-23653) (hereafter Trust Contest). Jonathan also filed a petition in the Estate Case alleging, among other things, that various transfers of property to Lesli before Richard's death were the product of undue influence or occurred while Richard lacked capacity. The petition also alleged that Lesli committed financial and physical abuse of Richard under Oregon and California law. The petition sought, among other things, return of all the property to the estate and damages for the abuse.

The dependent abuse claims in Jonathan's petition in the Estate Case were tried to a jury. The jury found true the claims of financial abuse under Oregon law and neglect under California law. The jury awarded Richard's estate damages of $32,000 for the Oregon claim and $2.0 million for the California claim.

Subsequently, the trial court rejected the contest of the will in the Estate Case and the petition in the Trust Contest, finding that Jonathan and Christopher had failed to prove that Richard's will, trusts, or asset transfers had been procured by Lesli's undue influence. Lesli argued that no damages should be awarded on the dependent abuse claims in the Estate Case because any award would be payable to Richard's estate and she was the beneficiary of the estate. The court rejected Jonathan's argument that, due to the abuse verdict, Lesli was ineligible to take under Richard's will pursuant to section 259 of the Probate Code. The court granted Lesli's motion for JNOV, overturning the jury's verdict on the abuse claims. The court granted Lesli's petition for probate of the will in the Estate Case and entered judgment in favor of Lesli on Jonathan's abuse claims.

DISCUSSION

I. *Substantial Evidence Supports the Trial Court's Finding on Undue Influence*

Appellants contend insufficient evidence supports the trial court's finding that the December 18, 2002 will and trust were not the product of Lesli's undue influence.

The parties agree that, because Richard lived in Oregon when he executed the will and trust, Oregon law applies to a determination of the validity of the documents. Under Oregon law, "[t]he fraud, force, or undue influence that will suffice to set aside a will must be such as to overcome the free volition or conscious judgment of the testator, and to substitute the wicked purposes of another instead, and must be the efficient cause, without which the obnoxious disposition would not have been made. This may be accomplished not alone by physical coercion or threats of personal harm or abuse, but also by the insidious operation of a stronger mind upon one weakened and impaired by disease or otherwise, whereby the latter is subjected to the former, and induced to do its bidding, instead of acting in the exercise of unconstrained volition or judgment. It is not all influence brought to bear upon the mind of the testator in the disposition of his property that may be denominated undue or fraudulent, as a friend or relative, or even those in confidential relation, may employ argument, or even persuasion, to induce a bequest, so that notwithstanding it leaves the mind free to act upon its own considerations

and judgment." (*In re Holman's Estate* (1902) 42 Ore. 345, 358 [70 P. 980, 913]; see also *In re Kelly's Estate* (1935) 150 Ore. 598, 616-617 [46 P.2d 84, 91].)

"The burden of proof as to undue influence is upon the contestant. [Citations.] However, where a confidential relationship exists between the testator and a beneficiary, along with other suspicious circumstances, the burden of production is placed upon the proponent, [citation], although the burden of proof never shifts from the contestant, [citation]." (*Nease v. Clark* (1971) 6 Ore.App. 589, 596 [488 P.2d 1396, 1399, fn. omitted].) In such circumstances, "slight evidence is sufficient to establish undue influence." (*In re Reddaway's Estate* (1958) 214 Ore. 410, 420 [329 P.2d 886, 890] (*Reddaway's Estate*).) In *Reddaway's Estate*, the Oregon Supreme Court explained that the "factors of importance in determining whether undue influence was exercised" include whether the beneficiary participated in the preparation of the will (*id.* at p. 891), whether the decedent received independent advice (*id.* at pp. 891-892), whether the making of the will involved "secrecy and haste," whether the decedent's attitude towards others changed without explanation, the nature of the change in the disposition of the property, whether the will makes an "unfair or unnatural disposition," and the susceptibility of the donor to influence (*id.* at p. 892). (See also *Matter of Swenson's Estate* (1980) 48 Ore.App. 497, 500-502 [617 P.2d 305, 306-307].) We review the trial court's determination under the substantial evidence standard of review. (*In re Marriage of Burkle* (2006) 139 Cal.App.4th 712, 737.)[4]

Analysis of the *Reddaway's Estate* factors in this case reveals few suspicious circumstances. Appellants repeatedly assert that Lesli "procured" the will and trust documents favorable to her, but they cite no evidence supporting that assertion. The evidence shows that Lesli helped make initial contact with Ms. Taylor, but she was not present most of the time that Richard and Ms. Taylor met and she never met with Ms. Taylor alone. Richard was able to obtain independent advice from Ms. Taylor in those

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4 It is not clear what the standard of review is under Oregon law, but appellants do not argue the de novo standard of review applies.

meetings. The will was not drafted in haste; it was drafted over several months and numerous meetings. Richard apparently did not tell other family members of the provisions of his will, but appellants cite to no evidence of secrecy surrounding the making of the will. To the contrary, Lesli called at least one of Richard's relatives to get information necessary for preparation of the will and informed the relative that the will provided for Lesli's financial security. Moreover, "[n]othing in the law requires a testator to publish the contents of his will from the housetops. Only where he wishes to do so and is restrained therefrom by the beneficiary can any inference of improper influence be drawn." (*Soumie v. McLean* (1963) 234 Ore. 485, 508 [382 P.2d 1, 11].)

There is no evidence that Richard's attitude toward others changed; e-mail messages in the record show that Richard continued to express love and affection toward his sons during the last year of his life. Although the disposition of Richard's property changed dramatically between the November 1990 will and the December 2002 will, that is not surprising; Richard was married to Kathleen in 1990. Richard explained in an October 2002 handwritten letter, prepared at the request of Ms. Taylor, why he did not want to leave his sons too much of an inheritance: "I want them to have motivation to achieve on their own, but I want to give them a head start for appropriate expenses." He offered the same explanation to Ms. Taylor. Near the end of Richard's October 2002 letter appears the following statement: "I love you all & I am proud of you, every one. The divisions I have made are my desires alone. They are fair, just and practical. In preparing these documents I have asked my attorney to protect my will & trusts to the full extent possible & to seek a release from each of you so no future arguments disrupt my stated goals here." It is not unnatural that Richard gave most of his property to his current wife. And, in any event, "[h]owever strongly we may believe that the testator was unjust in the disposition of his fortune . . . , the court cannot make a will for him, or correct the one legally made." (*In re Riggs' Estate* (1926) 120 Ore. 38, 63 [241 P. 70; 250 P. 572, 760].)

Finally, despite Richard's illness, the evidence shows that he was mentally competent at the time of the making of the will. Ms. Taylor testified to that effect.

Portions of a videotaped deposition of Richard's psychiatrist of 14 years, James Boehnlein, M.D., were played at trial. Dr. Boehnlein stated that he met with Richard on December 17, 2002, the day before the will was signed, and Richard was mentally competent to determine the disposition of his estate. Dr. Boehnlein had not, as of that date, noticed a diminution of Richard's cognitive ability or judgment due to Richard's illness. The record also contains a handwritten 10-page estate planning questionnaire completed by Richard on October 16, 2002, and a handwritten letter by Richard on the same date explaining his desires for the disposition of his estate. There is no evidence that Richard was particularly susceptible to undue influence at the time of the making of the will.[5]

Accordingly, even assuming there was sufficient evidence of suspicious circumstances to shift the burden of production to Lesli, substantial evidence supports the trial court's finding that the December 2002 will and trust were not the product of undue influence.[6]

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[5] Richard was addicted to intravenous Fentanyl, a pain medication, in the 1980's. Appellants assert that Lesli fed Richard's addiction by encouraging his use of Fentanyl patches. However, they cite no evidence that Richard was receiving more than the prescribed amount of Fentanyl at the time the will was executed or that his use of Fentanyl patches made him susceptible to undue influence. Any such inference is belied by the overwhelming evidence of Richard's mental competence.

[6] Appellants assert that Richard "attempted to alter his estate plan" shortly before his death. However, the evidence does not support that assertion. Appellants rely on phone call recordings which indicate that Richard intended, while alive, to provide more financial support for his sons than he had in the past. Richard did not, in the recordings, express a specific desire to change the dispositions in his will and there is no evidence that Richard made any concrete step toward revising his estate plan. Nor is there any evidence that Lesli interfered with any such desire. In any event, appellants cite no authority that any misgivings Richard had at the end of his life provide a basis to contest the December 2002 will and trust.

II. *The Trial Court Did Not Err in Granting Lesli's Motion for JNOV*

The jury found true Jonathan's claims of financial abuse under Oregon law and neglect under California law. Subsequently, the trial court granted Lesli's motion for JNOV, overturning the jury's verdict on those abuse claims.

"In ruling on a motion for JNOV, ' "the trial court may not weigh the evidence or judge the credibility of the witnesses, as it may do on a motion for a new trial, but must accept the evidence tending to support the verdict as true, unless on its face it should be inherently incredible. Such an order may be granted only when, disregarding conflicting evidence and indulging in every legitimate inference which may be drawn from plaintiff's evidence, the result is no evidence sufficiently substantial to support the verdict. [¶] On an appeal from the judgment notwithstanding the verdict, the appellate court must read the record in the light most advantageous to the plaintiff, resolve all conflicts in his favor, and give him the benefit of all reasonable inferences in support of the original verdict." ' [Citation.]" (*Carter v. CB Richard Ellis, Inc.* (2004) 122 Cal.App.4th 1313, 1320.) The ultimate question is "whether the record, viewed in the light most favorable to the verdict, contains any substantial evidence to support the verdict." (*Mason v. Lake Dolores Group* (2004) 117 Cal.App.4th 822, 829.) " 'Substantial evidence' is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value. [Citations.] 'Substantial evidence . . . is not synonymous with "any" evidence.' Instead, it is ' " 'substantial' proof of the essentials which the law requires." ' [Citations.]" (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) "While substantial evidence may consist of inferences, such inferences must be 'a product of logic and reason' and 'must rest on the evidence' [citation]; inferences that are the result of mere speculation or conjecture cannot support a finding [citations]." (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.)[7]

[7] The jury was instructed that Jonathan was required to prove the elements of the Oregon and California abuse actions by clear and convincing evidence. It is not clear what basis there is for that instruction under Oregon law. Under California law, proof by

A. *Financial Abuse Under Oregon Law*

The jury was instructed that, in order to establish that Lesli financially abused Richard within the meaning of section 124.100 of the Oregon Revised Statutes (ORS), Jonathan was required to prove that: (1) Lesli "wrongfully took or appropriated money or property of Richard . . . while he was living in Oregon"; (2) at the time of the wrongful appropriation Richard was either " 'Financially Incapable' " or " 'Incapacitated' "; (3) Richard was harmed; and (4) Lesli caused the harm. The jury was further instructed that " 'financially incapable' means a condition in which a person is unable to manage financial resources . . . for reasons including, but not limited to, mental illness, mental deficiency, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication . . . . 'Manage financial resources' means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income." (See ORS § 125.005(3).) The jury was additionally instructed that " 'incapacitated' means a condition in which a person's ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person's physical health or safety." (See ORS § 125.005(5).)

Jonathan's Oregon financial abuse claim was based on two checks totaling $32,000 paid to Lesli's father. A check for $25,000 was dated October 27, 2002, and a check for $7,000 was dated December 2, 2002. Lesli testified that Richard wrote the $25,000 check, she wrote the $7,000 check, and Richard signed both. She further testified that Richard told her the checks were a gift so that she could repay car and

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clear and convincing evidence is based on section 15657 of the Welfare and Institutions Code, which authorizes enhanced remedies and an award of attorney fees "[w]here it is proven by clear and convincing evidence that a defendant is liable for [abuse or neglect] and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse . . . ." (See also *Delaney v. Baker* (1999) 20 Cal.4th 23, 35; *Perlin v. Fountain View Management, Inc.* (2008) 163 Cal.App.4th 657, 664.) We do not depend on a heightened evidentiary standard in concluding the jury's verdict is not supported by substantial evidence; our conclusion in this case would be the same whether proof is required by the preponderance of the evidence or clear and convincing evidence.

educational loans from her parents. But she acknowledged in deposition testimony that the "repayment" was really a ruse by Richard to hide money from Kathleen due to an ongoing child support dispute.

The evidence the $32,000 payment was for the purpose of hiding funds from Kathleen is insufficient to show that Lesli "wrongfully" took funds from Richard, causing him harm. Appellants cite no other evidence that the checks were a wrongful taking within the meaning of ORS section 124.100. Moreover, there is no evidence that Richard was "financially incapable" or "incapacitated" in October or December 2002. (ORS § 125.005(3) & (5).) To the contrary, as detailed above in relation to undue influence, the evidence showed that Richard was mentally capable in late 2002, which is when he revised his will. As for his physical condition, Lesli testified he was "ambulatory and competent" and not dependent on her, even though she did help take care of him. A friend who visited Richard in October or November 2002 testified merely that Richard was "a little drawn" and "a little frail." Appellants' psychiatric expert testified that Richard was in a "weakened state" after the cancer diagnosis, but he agreed that Richard was not incapacitated.[8]

Because no substantial evidence supports the jury's finding that Lesli committed financial abuse under Oregon law, the trial court properly granted Lesli's JNOV motion with respect to that cause of action.

B. *Neglect Under California Law*

The jury was instructed that, in order to establish that Lesli neglected Richard within the meaning of California's Elder Abuse and Dependent Adult Civil Protection

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[8] Without specifying dates, appellants assert that Richard "had periods of total incapacitation" and was "overmedicated frequently." However, the citations provided by appellants merely indicate that there were times Richard wore two Fentanyl patches and that Lesli encouraged Richard to take pain medication, despite his resistance. A psychiatrist testified for appellants that, based on his review of Richard's medical records and review of a videotape of Richard on vacation, Richard "was on perhaps too heavy a dose" of Fentanyl. Even assuming a jury could reasonably infer that there were times when Richard was overmedicated, there is no evidence that any overmedication affected his competence at the times the checks were written.

Act (Welf. & Inst. Code, § 15600 et seq.), Jonathan was required to prove that: Richard was a dependent adult in Lesli's care; Lesli failed to use the degree of care that a reasonable person would use by failing to provide medical care for Richard's physical and mental health needs; Lesli acted with recklessness, malice, oppression, or fraud;[9] and Richard was harmed by Lesli's actions. The special verdict form framed the issue differently, asking "Did Lesli Kloor fail to use that degree of care that a reasonable person in the same situation would have used in assisting in personal hygiene, or in the provision of food, clothing, or shelter?" Neglect encompasses both failure to provide medical care and to provide care with respect to hygiene, food, clothing, and shelter. (Welf. & Inst. Code, § 15610.57.) The court instructed the jury that a "dependent adult" is "a person between the ages of 18 and 64 years who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights." (See Welf. & Inst. Code, § 15610.23.) In arguing that the trial court erred in granting the JNOV motion, appellants describe four different categories of alleged neglect: "Poor Hygiene," "(Deliberately) Improper Medication of Decedent," "Poor Nutrition," and "Locking Decedent Out of the House." We will address each of these in turn.[10]

In contending that Lesli neglected Richard by providing poor hygienic care, appellants cite only testimony by Jonathan regarding a trip he took to visit his father in Napa County on August 13, 2003, about two weeks before Richard's death. Richard, who was physically debilitated at the time, told Jonathan that "he had not been bathed in several weeks." However, even assuming that the testimony was sufficient to establish that Richard had not been bathed in weeks and that not providing regular baths could in

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[9] This element is required for enhanced remedies under Welfare and Institutions Code section 15657. We do not rely on this element in affirming the trial court's order granting Lesli's JNOV motion.

[10] We do not consider the two juror declarations appellants submitted to the trial court in opposition to the JNOV motion, which explained the bases for the jurors' findings. Without addressing the admissibility of such declarations, it is clear they are not part of the evidence before the jury that may be considered in determining whether there is substantial evidence to support the verdict.

some circumstances provide a basis for a neglect claim, Jonathan's testimony is not substantial evidence that Lesli neglected Richard in this regard. There is no testimony that Richard appeared dirty, had body odor, or suffered any negative health consequences from any lack of regular bathing. Moreover, immediately prior to Jonathan's visit, Richard was in the hospital and, before that, on a trip to New Mexico with Christopher from August 6 through August 9. Thus, Richard was not in Lesli's care and she was not responsible for his hygienic condition immediately prior to Jonathan's visit.

Appellants' contention that Lesli neglected Richard by improperly medicating him is based on allegations that Lesli was responsible for Richard's alleged overuse of Fentanyl patches. There are only meager suggestions of excessive use of Fentanyl patches in the portions of the record cited by appellants. There is a doctor's note on August 18, 2003, 10 days before Richard's death, in which the doctor stated, "I will not continue to follow him unless he receives Fentanyl through only one source." There is testimony from an expert psychiatrist that, based on his review of Richard's medical records and a videotape of Richard on vacation, Richard's doctors had prescribed "perhaps too heavy a dose" of Fentanyl.[11] And there is testimony that at times Richard wore two Fentanyl patches, although Lesli's medical expert explained that there are patches of varying strengths that can be worn together to reach the prescribed strength. There is no evidence regarding the strength of the patches worn by Richard. Lesli testified that Richard never took more Fentanyl than prescribed by his doctors. Even

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[11] There is no evidence that Richard's doctors were unaware of Richard's past addiction to Fentanyl or that Lesli can be held responsible for the pain medication prescribed to Richard. Moreover, a specialist in the treatment of liver cancer testified on Lesli's behalf that receiving Fentanyl through patches is "a subtle and sort of muted pain medication experience" as compared to receiving it intravenously. He stated, "In sharp contrast to this intravenous Fentanyl, which is what [Richard] was addicted to before," "transdermal or the patch as it's known, has very little abuse potential . . . and the experience that one has taking it is entirely different." He also testified that Richard's pain medications were appropriate and that "most of [his] patients are on these same drugs at these same doses and continue to function as lawyers, judges, doctors, painters, and everything else that you can imagine."

assuming the evidence cited by appellants is sufficient to support a finding that Richard sometimes used more Fentanyl than prescribed, there is no substantial evidence that Lesli was responsible for any overuse.[12] Moreover, there is no evidence that at any times when Richard was overmedicated he was dependent on Lesli for his medications.[13] Lesli testified that, for the most part, Richard took care of his own medications. Christopher testified that Richard gave himself insulin shots. Accordingly, even assuming there is sufficient evidence Richard was a "dependent adult" within the meaning of the statute, there is insufficient evidence that Lesli's actions caused any overmedication. Finally, there is no evidence Richard was harmed by any overmedication.

In contending that Lesli neglected Richard by providing poor nutritional care, appellants cite only testimony from Chistopher regarding his observations during a five-day trip to Napa in July 2003. Christopher testified there was little food in the house, Richard ate little healthy food, and Lesli did not cook for Richard. However, Christopher and his brother were available to cook and shop for their father during that visit, and Christopher admitted Lesli gave Richard commercially prepared meals. Appellants cite no evidence regarding Richard's overall food consumption during his time in Napa or evidence that any poor nutrition negatively impacted his health. As late as August 14, 2003, two weeks before Richard's death, his physician recommended, on a nutritional care record, only that Richard add protein powder to his diet.

Appellants' contention that Lesli neglected Richard by locking him out of their home is based on an incident during Christopher and Jonathan's July 2003 visit to Napa. A large group went out to a restaurant in the evening. Christopher made a joke about

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[12] Appellants cite to testimony regarding instances when Lesli encouraged Richard to take pain medication, despite Richard's resistance. However, there is no evidence that Lesli was encouraging Richard to take more than prescribed, and his resistance demonstrates that Lesli did not unilaterally control Richard's medication intake.

[13] Appellants only cite to Jonathan's testimony that, when he visited in the last weeks of his father's life, his father could not access the medications, which were kept upstairs. Appellants do not cite any evidence that Richard was dependent on Lesli for his medications at other times.

Lesli and she left the restaurant, taking with her the keys to the home she shared with Richard. Christopher testified that Richard used his cell phone to call Lesli, who was at her parent's house, and Richard apologized and "begg[ed] and plead[ed]" to be let into the house. Richard's mother, who was also there, testified Richard told Lesli, "Don't worry about the money. You know where all the money is. They're not asking for money." After "about an hour," Lesli's father came and provided the key to the house. Although the incident is troubling, appellants cite no authority that the type of incident described can constitute neglect under the statute. Neither do they cite evidence that Richard was harmed by being locked out of his home for about an hour; notably, he had many family members around at the time and access to a car.[14]

Finally, appellants assert that Richard described Lesli's neglect in August 11 and 12, 2003 phone calls to Jonathan and Kathleen, recordings of which were played for the jury. However, there is no suggestion in the recordings that Richard believed Lesli was neglecting him or that she was anything but sincere in her concern for him. For example, Richard said Lesli "loves me," "Lesli's a doll," and "Lesli has been totally distraught about my health since last September." The only specific portion of the calls referred to in appellants' brief is Richard's statement that Lesli was "saying things to me like if you leave this house when I get back I am going to hang myself." Although disturbing, appellants cite no authority that such a statement can support a finding of neglect. Moreover, the recordings are not evidence of " 'solid value' " (*Roddenberry v. Roddenberry*, *supra*, 44 Cal.App.4th at p. 651) sufficient to support the verdict. The record shows that Richard's mental state had deteriorated at the time of the phone calls.

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14 Appellants also refer to an incident the night before the locking out incident, when Lesli sped Richard and his sons and mother back to Napa from a Giants baseball game in San Francisco. Richard complained of severe stomach pain and wanted to use a bathroom; appellants assert that Lesli was "controlling and abusive" in refusing to stop. However, the undisputed evidence shows that Lesli was trying to get Richard to go to the hospital, while he insisted the pain was just severe gas. Even if Lesli showed poor judgment in speeding and not finding somewhere to stop for Richard to use the bathroom, there is no evidence she was not sincere in her concern or that Richard was harmed by her actions.

An August 12 physician's examination refers to the "paranoid symptomatology [Richard] has had over the past several days." A later hospice assessment refers to "recent confusion/irrational behavior"; and a psychologist who met with Richard in July and August 2003 testified that, during the week before Richard died, he was acting "disoriented," "bizarre," and paranoid.

Because no substantial evidence supports the jury's finding that Lesli committed neglect of a dependent adult under California law, the trial court properly granted Lesli's JNOV motion with respect to that cause of action.[15]

DISPOSITION

The trial court's judgments are affirmed. Costs are awarded to respondent/cross-appellant.

SIMONS, J.

We concur.

JONES, P.J.

BRUINIERS, J.

[15] We need not and do not reach Lesli's argument that Jonathan lacked standing to bring the neglect cause of action. Moreover, because we conclude the trial court did not err in granting Lesli's JNOV motion, we need not and do not consider appellants' contention that Lesli was ineligible to take under the will under Probate Code section 259. For that section to apply, this court would need to reinstate the jury's verdict on the neglect action. (See Prob. Code, § 259, subd. (a)(1).)